

CALIFORNIA COASTAL COMMISSION

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Commission Action:

**STAFF REPORT: APPEAL - NO SUBSTANTIAL ISSUE**

LOCAL GOVERNMENT: City of Los Angeles

LOCAL DECISION: Approved with No Special Conditions

APPEAL NUMBER: A-5-VEN-05-239

APPLICANT: City of Los Angeles Department of Public Works

APPELLANTS: C.V. Beck, Lisa Ezell, John Davis et al (see list on Page Two)

PROJECT LOCATION: Intersection of Windward Avenue & Main Street (Venice traffic circle), Venice, City of Los Angeles, Los Angeles County.

PROJECT DESCRIPTION: Appeal of City of Los Angeles Local Coastal Development Permit No. 05-01 approved for the installation of a 72-inch tall Robert Graham art sculpture entitled "Torso" (and stainless steel base for total project height of 11.5 feet) within the Venice Windward traffic circle median.

SUBSTANTIVE FILE DOCUMENTS:

1. City of Los Angeles Local Coastal Development Permit No. 05-01.
2. City of Los Angeles Cultural Affairs Commission Approval of Public Arts Project entitled "Torso", May 6, 2004.
3. Los Angeles City Council Motion regarding Public Arts Project entitled "Torso", May 28, 2004 (Exhibit #4, p.2).

SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission, after public hearing, determine that the local government's approval of the local coastal development permit for the proposed development raises **no substantial issue** with regard to the Chapter 3 policies of the Coastal Act. The Commission's role at the "substantial issue" phase of an appeal of a local government action taken prior to certification of its local coastal program is to decide whether the appeal of the local government action raises a substantial issue as to conformity with the Chapter 3 policies of the Coastal Act. In this case, the local government's approval of the coastal development permit does not violate the Chapter 3 policies of the Coastal Act. The appellants do not agree with the staff recommendation. **The motion to carry out the staff recommendation is on Page Five.**

I. APPELLANTS' CONTENTIONS

The following 49 persons have appealed the City of Los Angeles approval of Local Coastal Development Permit No. 05-01:

C.V. Beck, Lisa M. Ezell, John Davis, Rev. Steven H. Weller, Regina Weller, Pamela Shamshiri, Meg Paulson, Tim Paulson, Donna Ganzoni, Brian Ollman, Heidi Ollman, Stephanie Green, James R. Smith, Chic Campbell, Paul Shaffer, Regina Risoles, Bill Teufel, Eric Vollmer, Sylviane Dungan, Susan D. Williams, Eric Ahlberg, Beth Tate, Janet Gervers, Dean Henderson, Nancy McCullogh, Brad Kay, Joy Ballin, Carol Berman, Paul Herzog, Fred Michael Crawford, Laura Crawford, Rich Braaksma, Sherilynn Braaksma, John E. Harris, Susan Harris, Lorenzo Hurtado, Deborah Hurtado, Suzanne Happ, Haines Hall, Tim Gribble, Poppy Gee, Chris Giquinto, Michele Sommerbath, Michael Crews, Judy Contreras, Hillary Greene Shugrve, G. Fialka, Joshua Woollen and Audrey Woollen.

Local Coastal Development Permit No. 05-01 approves the installation of a 72-inch tall Robert Graham art sculpture entitled "Torso" on a stainless steel base within the Venice Windward Traffic Circle Median in the North Venice area (See Exhibits). The applicants' grounds for the appeal are as follows:

- The proposed public art project violates Section 30251 of the Coastal Act because it is not visually compatible with the character of the surrounding area and would not enhance visual quality.
- The City's plan to install public art in the traffic circle did not involve sufficient public participation. A fountain or more appropriate artwork should be considered instead.
- The proposed nude, headless and limbless "Torso" offends some of the appellants. The project site is one block from a church that several of the appellants attend.
- The proposed public art project is a visual distraction and a traffic hazard.
- The cost to install the public art would waste \$70,000 of taxpayers' money.
- The local coastal development permit is invalid because the City does not have a certified Local Coastal Program (LCP) under which the Coastal Commission has delegated permitting authority. The City improperly construed the provisions of the California Environmental Quality Act (CEQA). The City violated the Brown Act. [John Davis – See Exhibit #11].

The appellants are requesting that the Commission overturn the City's approval of the local coastal development permit for the proposed project.

II. LOCAL GOVERNMENT ACTION

On May 6, 2004, the City of Los Angeles Cultural Affairs Commission approved the acceptance into the City art collection a Robert Graham art sculpture entitled "Torso" that Roy Doumani was donating to the City. The Cultural Affairs Commission also authorized the installation of "Torso" in the Venice traffic circle (a.k.a. the Venice Windward traffic circle median). The approval of the Los Angeles City Council was also required before the sculpture could be actually accepted by the City. On May 28, 2004, the Los Angeles City Council passed a motion authorizing the acceptance of the donated "Torso" sculpture and its installation at the Venice traffic circle (Exhibit #4, p.2). On June 17, 2004, the Department of Public Works accepted the actual sculpture on behalf of the City.

On March 17, 2005, the City of Los Angeles Bureau of Engineering (Public Works Department) held a public hearing for Local Coastal Development Permit No. 05-01 for the proposed installation of the artwork in the Venice traffic circle. City records indicate that approximately twenty people attended the hearing (in addition to City staff). On March 21, 2005, the City of Los Angeles Bureau of Engineering issued a Notice of Decision approving Local Coastal Development Permit No. 05-01 with standard conditions to address the following: receipt and acknowledgement of the permit, permit expiration, interpretation, assignment of permit, notice that the terms and conditions run with the land, and notice that State Coastal Commission approval may be required.

Lisa M. Ezell, John Davis, Janet Gervers, Sylvianne Dungan and Rev. Steven H. Weller appealed the City's March 21, 2005 approval of the local coastal development permit to the City of Los Angeles Board of Public Works. On May 23, 2005, the Board of Public Works denied the appeals and upheld the approval of Local Coastal Development Permit No. 05-01 for the installation of the proposed public art project at the Venice traffic circle.

On May 24, 2005, the Commission's South Coast District office in Long Beach received the City's Notice of Final Action for its approval of Local Coastal Development Permit No. 05-01 and established the twenty-working day appeal period. During the appeal period, which ended on June 22, 2005, the Commission's Long Beach office received appeals from 49 persons. The Commission's South Coast District office notified the City Bureau of Engineering upon receipt of the first appeal (from C.V. Beck on June 21, 2005). On June 24, 2005, Commission staff received from the City a copy of its local coastal development permit file. On June 24, 2005, Commission staff also received from the City a 49-day waiver so the substantial issue hearing could be delayed until the Commission's August hearing in Southern California.

III. APPEAL PROCEDURES

Section 30600(b) of the Coastal Act provides that prior to certification of its Local Coastal Program (LCP), a local jurisdiction may, with respect to development within its area of jurisdiction in the coastal zone and consistent with the provisions of Sections 30604, 30620 and 30620.5, establish procedures for the filing, processing, review, modification, approval or denial of a coastal development permit. Pursuant to this provision, the City of Los Angeles developed a permit program in 1978 to exercise its option to issue local coastal development permits.

Sections 13301-13325 of Title 14 of the California Code of Regulations provide procedures for issuance and appeals of locally issued coastal development permits. Section 30602 of the Coastal Act allows *any* action by a local government on a coastal development permit application evaluated under Section 30600(b) to be appealed to the Commission. The standard of review for such an appeal is the Chapter 3 policies of the Coastal Act. [Cal. Pub. Res. Code §§ 30200 and 30604.]

After a final local action on a local coastal development permit application, the Coastal Commission must be noticed within five days of the decision. After receipt of such a notice which contains all the required information, a twenty working-day appeal period begins during which any person, including the applicant, the Executive Director, or any two members of the Commission, may appeal the local decision to the Coastal Commission. [Cal. Pub. Res. Code § 30602.]

Any appeal of the local action is then analyzed to determine if a substantial issue exists as to conformity with Chapter 3 of the Coastal Act (Sections 30200-30265.5). [Cal. Pub. Res. Code § 30625(b)(1).] Unless the Commission finds that the appeal raises no substantial issue, the Commission then holds a public hearing in which it reviews the coastal development permit as a de novo matter. [Cal. Pub. Res. Code §§ 30621 and 30625.]

At this point, the Commission may decide that the appellants' contentions raise no substantial issue as to conformity with Chapter 3 of the Coastal Act, in which case the action of the local government stands. Or, the Commission may find that a substantial issue exists with respect to the conformity of the action of the local government with Chapter 3 of the Coastal Act if it finds that the appeal raises a significant question regarding consistency with the Chapter 3 policies of the Coastal Act. If the Commission finds that a substantial issue exists, then the hearing will be continued as a de novo permit request. Section 13321 of the Coastal Commission regulations specifies that de novo actions will be heard according to the procedures outlined in Sections 13114 and 13057-13096 of the Commission's regulations.

IV. DUAL PERMIT JURISDICTION

Within the areas specified in Section 30601, which is known in the City of Los Angeles permit program as the *Dual Permit Jurisdiction* area, the Coastal Act requires that the development which receives a local coastal development permit also obtain a "dual" coastal development permit from the Coastal Commission. For projects located inland of the areas identified in Section 30601 (*Single Permit Jurisdiction*), the City of Los Angeles local coastal development permit is the only coastal development permit required. The proposed development is not located within the *Dual Permit Jurisdiction*.

V. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that **no substantial issue exists** with respect to whether the local government action conforms with the provisions of Chapter 3 of the Coastal Act (commencing with Section 30200), pursuant to California Public Resources Code Section 30625(b)(1).

Staff recommends a **YES** vote on the following motion:

MOTION:

*“I move that the Commission determine that Appeal No. A-5-VEN-05-239 raises **NO SUBSTANTIAL ISSUE** as to conformity with Chapter 3 of the Coastal Act.”*

A majority of the Commissioners present is required to pass the motion.

Resolution to Find No Substantial Issue for Appeal A-5-VEN-05-239

The Commission hereby finds that Appeal No. A-5-VEN-05-239 presents no substantial issue with respect to conformity with the Chapter 3 policies of the Coastal Act.

VI. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description

The City of Los Angeles (the applicant) proposes to install a Robert Graham art sculpture entitled “Torso” within the Venice traffic circle (Exhibit #2). See Exhibit #3 for a photograph of the proposed Venice “Torso”. The 72-inch tall aluminum sculpture would be placed on a concrete and stainless steel base for total project height of 11.5 feet (Exhibit #2, p.2). The Venice traffic circle is a round-about located at the intersection of Windward Avenue and Main Street in North Venice, about one thousand feet inland of the Venice boardwalk and beach (Exhibit #1). This intersection was part of Abbot Kinney’s original “Venice of America” canals system, until it was filled in 1927.

B. Factors to be Considered in Substantial Issue Analysis

Section 30625(b)(1) of the Coastal Act states that the Commission shall hear an appeal of a local government action carried out pursuant to Section 30600(b) unless it finds that no substantial issue exists as to conformity with Chapter 3 of the Coastal Act. The term “*substantial issue*” is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission’s regulations simply indicates that the Commission will hear an appeal unless it “finds that the appeal raises no significant question.” In previous decisions on appeals, the Commission has been guided by the following factors.

1. The degree of factual and legal support for the local government’s decision that the development is consistent or inconsistent with the relevant provisions of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;

4. The precedential value of the local government's decision for future interpretations of its LCP; and,
5. Whether the appeal raises local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

Staff is recommending that the Commission find that **no substantial issue** exists with respect to whether the local government action conforms with the provisions of Chapter 3 of the Coastal Act for the reasons set forth below.

C. **Substantial Issue Analysis**

The appellants assert, among other things, that the proposed development does not conform to the Chapter 3 policies of the Coastal Act. Specifically, the appellants assert that:

- The proposed public art project violates Section 30251 of the Coastal Act because it is not visually compatible with the character of the surrounding area and would not enhance visual quality.
- The City's plan to install public art in the traffic circle did not involve sufficient public participation. A fountain or more appropriate artwork should be considered instead.
- The proposed nude, headless and limbless "Torso" offends some of the appellants. The project site is one block from a church that several of the appellants attend.
- The proposed public art project is a visual distraction and a traffic hazard.
- The cost to install the public art would waste \$70,000 of taxpayers' money.
- The local coastal development permit is invalid because the City does not have a certified Local Coastal Program (LCP) under which the Coastal Commission has delegated permitting authority. The City improperly construed the provisions of the California Environmental Quality Act (CEQA). The City violated the Brown Act. [John Davis – See Exhibit #11].

The appellants are requesting that the Commission overturn the City's approval of the local coastal development permit for the proposed public art project. The standard of review is only whether the appeal raises a substantial issue as to conformity with Chapter 3 of the Coastal Act, Cal. Pub. Res. Code §§ 30200-265.5, (hereinafter "Chapter 3").¹ [Cal. Pub. Res. Code

¹ Unless otherwise indicated, all subsequent statutory references are to sections within the Coastal Act. Cal. Pub. Res. Code §§ 30000 *et seq.*

§ 30625(b)(1); 14 C.C.R. § 13321.] In this case, the local government's findings for the approval of the coastal development permit support its determination that the proposed development conforms to the policies of Chapter 3 of the Coastal Act. Therefore, the appeals raise no substantial issue as to conformity with Chapter 3.

Applying the five factors listed in the prior section further clarifies that the appeal raises no "substantial" issue with respect to Chapter 3, and the appeals do not implicate Chapter 3 policies to a level of significance necessary to meet the substantiality standard of Section 30265(b)(1).

The first factor is the degree of factual and legal support for the local government's decision that the development is consistent with Chapter 3 of the Coastal Act. The appellants assert that the proposed public art project violates Section 30251 because it is not visually compatible with the character of the surrounding area and would not enhance visual quality.

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The scenic and visual qualities of the Venice area are a resource of public importance. In addition to highly scenic areas like the canals and historic walk streets, the Commission has protected visual resources throughout the entire Venice area by assuring that new development does not impede visual or physical access and that the scale of development conforms with the scale of the surrounding development.

In this case, the project site (Venice traffic circle) is not located next to the beach, the canals, or any walk street where the Commission has found the visual environment to be of particular significance. The project site is located about one thousand feet inland of the boardwalk and beach, at the intersection of Windward Avenue and Main Street (Exhibit #1). Established residential neighborhoods occupy the areas north and east of the traffic circle. The Main Street and Pacific Avenue commercial areas are northwest and west of the site. As the traffic circle is approached from the beach, the streetscape is mixture of two-to-four-story structures (some of which have historic arcades with cast concrete column heads), various on-site signs, sidewalk retail sales (e.g. clothing, jewelry and sunglasses), and parking lots. The existing development appeals to a variety of tastes.

The Venice traffic circle is an historical artifact representing the circle at the terminus of the historic canal system. A change in the shape of the circle would raise visual quality issues, but the proposed project would not change the shape of the traffic circle.

The City's findings for approval of the local coastal development permit state that the proposed project will not interfere with existing views. This is true. The traffic circle is situated inland of the beach, behind two blocks of two-to-four-story buildings, so the project site is not visible from the beach or boardwalk. The existing views of the project site from the surrounding areas consist of existing buildings, the five paved streets that enter the traffic circle, and urban landscaping. The proposed placement of an 11.5-foot tall sculpture or statue in the Venice traffic circle would not adversely affect any public views through or across the traffic circle. It would also not adversely affect any public views toward or from the shoreline area. The proposed artwork is not as tall as any of the buildings in the area, and is no wider than a mature tree. The mass and scale of the proposed project is proportional to the size of the traffic circle and the surrounding buildings (which include a former market now being used as a mail processing facility, the post office, and two-story commercial buildings). Therefore, the proposed project is not large enough to have any significant effect on the public's view of the coastal resources in the area. Therefore, the impact of this development on the visual resources of this area of Venice does not raise a significant Coastal Act issue.

The issue raised by the appeals, however, is not one of view blockage, but an issue of taste in art. The appellants are not objecting to the placement of any sculpture in the Venice traffic circle, but are objecting to the placement of "Torso" in the circle. Several of the applicants state that the proposed nude, headless and limbless "Torso" offends them. They assert that "Torso" is degrading to women and potentially harmful to children who see it. While the City determined that "the proposed project will in fact provide aesthetic improvements by providing a positive visual enhancement to the area," the appellants could not disagree more. The appeals also assert that "Torso" would distract drivers and create a traffic hazard, where a less provocative artwork may not be as distracting. The appellants, who assert that the City excluded them from the decision-making process when the decision was made in 2004 to place "Torso" in the traffic circle, have requested a more active role in determining what type of statue or other artwork should be placed in the traffic circle. They say "Torso" is simply not visually compatible with the character of the surrounding area.

While the Commission recognizes that people may disagree on what type of artwork is good or appropriate for the project site, the Commission finds that the record supports the City's conclusion that the proposed project is consistent with Section 30251. Regardless of what is portrayed by the artwork, the placement of an 11.5-foot tall sculpture in the Venice traffic circle would not be out of character with the surrounding densely developed urban landscape and would not degrade the visual quality of the area.² Similar public artworks, by Robert Graham and many other artists, are displayed in public areas throughout Los Angeles County. An artwork that is provocative or controversial does not make the art visually incompatible with the surrounding area or degrade the visual quality of the areas. The City conclusion regarding the consistency of the proposed development with the Chapter 3 policies is correct. The controversy surrounding "Torso" and the process under which the City chose the location for its display do not raise any substantial issues in regards to the Chapter 3 policies of the Coastal Act.

Moreover, this Commission's role at the "substantial issue" phase of an appeal is not to reassess the evidence in order to make an independent determination as to consistency of the project with Chapter 3, but only to decide whether the appeals of the local government's action

² The appellants also allege that the proposed project would not enhance visual quality, but that provision of Section 30251 only applies in visually degraded areas, which this is not.

raise a substantial issue as to conformity with those standards. In this case, the local government's decision correctly applied the policies of Chapter 3, was amply supported by the facts, and was consistent with the law. Thus, the appeals raise no substantial issue regarding conformity therewith.

The second factor is the scope of the development approved by the local government. The scope of the approved development is limited to the placement of an 11.5-foot tall public artwork within a public-right-of-way. Thus, even if the project were to raise an issue regarding consistency with Chapter 3 policies, the small scope of the approved development would not support a finding that the appeals raise a "substantial" issue.

The third factor is the significance of the coastal resources affected by the decision. The appellants assert only that "Torso" is not visually compatible with the character of the surrounding area. As indicated above, this is not an area that the Commission has recognized as having visual resources of particular significance. Thus, again, even if the local approval were to raise an issue regarding consistency with Chapter 3 policies, the significance of the resources affected would not support a finding that the appeals raise a "substantial" issue.

The fourth factor is the precedential value of the local government's decision for future interpretations of its LCP. This is designed to avoid leaving decisions in place that could create a precedent for how the relevant provision of the LCP is to be interpreted, assuming the local government has a certified LCP. In this case, the City does not have a certified LCP. The City's interpretation of the policies of the certified LUP has not been raised in these appeals. Nonetheless, the Commission does not find any negative precedential value in the City's interpretation of the policies of the certified LUP or Chapter 3, in this case.

The final factor is whether the appeals raise local issues, or those of regional or statewide significance. These appeals raise a localized issue related to the City's choice of public art, and the process the City used to decide where to display such public art, but the appeals do not raise any issues of statewide significance.

Therefore, in conclusion, the Commission finds that the local government's action does not raise any substantial Chapter 3 issues because the City's decision is consistent with Chapter 3 and allows a small scale project that does not affect any particularly significant resources or set any adverse precedent, and the appeals raise only local issues. Therefore, no substantial issue exists with respect to the Chapter 3 policies of the Coastal Act.

D. Responses to Appellants' Specific Contentions

The previous section assessed the appeal under the applicable standard of review – whether it raised a substantial issue as to conformity with Chapter 3 of the Coastal Act. The appellants have also raised several specific grounds for the appeals that are not directly relevant to that standard. Nevertheless, the Commission responds to each of the appellants' specific contentions below.

- The City's plan to install public art in the traffic circle did not involve sufficient public participation. A fountain or more appropriate artwork should be considered instead.

This process that a local government uses to decide which artwork is displayed, whether it is a statue, water fountain or other artwork, is a local issue that raises no substantial issue in regards to Chapter 3 of the Coastal Act. This decision (what and where) necessarily must be made before the project can be reviewed for compliance with the Coastal Act. The Commission is not an appellate body of general jurisdiction and does not have authority to review allegations of alleged due process violations in the City's procedures. The coastal development permit process is used only to determine whether the proposed development complies with the Coastal Act. If appellants feel that the City violated non-Coastal Act related procedural requirements, their remedy is in court. By the time the local coastal development permit was processed, the City had already decided that it wanted to display "Torso" in the Venice traffic circle. The Commission can overturn the City's decision in this matter only if it finds that a substantial issue exists with respect to the Chapter 3 policies of the Coastal Act, and the appeals do not raise a substantial issue.

- The proposed nude, headless and limbless "Torso" offends some of the appellants. The project site is one block from a church that several of the appellants attend.

Although the location, mass and scale of any development may raise Coastal Act issues, the subject or content of the artwork in question is not relevant. Chapter 3 of the Coastal Act provides no relief from offense by provocative, tasteless or questionable art. Therefore, the Commission cannot act as a censor of public art. Again, the choice of which public artwork to display in the Venice traffic circle is a local issue that raises no substantial issue in regards to Chapter 3 of the Coastal Act.

- The proposed public art project is a visual distraction and a traffic hazard.

The purpose of the proposed project is to display an artwork so that the general public can view it. It is debatable whether "Torso" is any more distracting than some of the advertising that permeates the Venice Beach area or the beachgoers who stroll through the area in their beach attire on the way to the boardwalk. Moreover, Chapter 3 of the Coastal Act contains no policy requiring the prevention of distractions along public thoroughfares. The hazard-related policies (Sections 30232, 30250, 30253, 30262 and 30263) relate to the development and transportation of oil and hazardous substances; hazardous industrial development; areas of high geologic, flood, or fire hazard; and hazards related to oil and gas development, respectively. In any case, the vehicle operators, cyclists, skaters and pedestrians who pass by or through the Venice traffic circle are obligated to pay attention and be on alert for one another, regardless of the potential distractions.

- The cost to install the public art would waste \$70,000 of taxpayers' money.

This again is a local issue that raises no substantial issue in regards to Chapter 3 of the Coastal Act.

- The local coastal development permit is invalid because the City does not have a certified Local Coastal Program (LCP) under which the Coastal Commission has delegated permitting authority. The City improperly construed the provisions of the California Environmental Quality Act (CEQA). The City violated the Brown Act. [John Davis – See Exhibit #11].

These contentions do not raise an issue in regards to consistency of the local decision with the policies of Chapter 3. In addition, the City of Los Angeles issues local coastal development permits without a certified LCP pursuant to Section 30600(b) of the Coastal Act (See Section III on Page Three). Local Coastal Development Permit No. 05-01 is a valid permit under Section 30600(b) of the Coastal Act. In regards to CEQA and the Brown Act, it is not the Commission's role to resolve conflicts over compliance with these laws. The Commission has a limited appellate authority/jurisdiction as defined by Section 30625(b). The Commission is not a judicial body of general jurisdiction, as its review is limited to assessing conformity with Chapter 3. The Brown Act and the California Environmental Quality Act are not within Chapter 3. The appellant John Davis has recourse in the State courts of general jurisdiction, as do the other appellants. The Commission does note, however, that the Brown Act, Cal. Gov't Code §§ 54950-963, does not apply to State agencies. Cf. Cal. Gov't Code §§ 54951 (defining "local agency" for purposes of the Brown Act) and 54952 (defining "legislative body" for purposes of the Brown Act).